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REMARKS

Claims 49-81 and 83-111 are pending in the present application. Reconsideration of the pending claims is respectfully requested for the reasons discussed below.

In the non-final rejection mailed January 24, 2006, the Examiner rejected claims 49 and 92 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner is not clear on what Applicant means by "corn starch components" as used in claims 49 and 92. Applicants traverse this rejection, but have amended the claims to replace "corn starch components" with "a corn starch component." Applicants submit that the meaning of "a corn starch component" is discernable from the specification, as found on pages 2, 7, and 8 of the application, in particular paragraph 0004, which states that the prior art "require the use of cornstarch, especially modified cornstarch, which has been chemically crosslinked", and paragraph 0015, which states that the coating composition of the present invention imparts crispiness "regardless of whether or not any cornstarch is present." Accordingly, Applications respectfully submit that presently pending claims 49 and 92 are not indefinite.

The Examiner has also rejected claims 49-51, 53-57, 61-63, 78-81, 83-85, 88-94, 101-103 and 111 under 35 U.S.C. 102(b) as being anticipated by WO 94/21143 to Baur et al. The Examiner stated that the '143 reference discloses rice or corn flour in the amount of 2-50% and dextrin in the amount of about 2-20%. The Examiner also concluded that "[t]he amounts of rice flour and dextrin falls within the ranges claimed; thus, the ratio also falls within the ranges claimed."

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Applicants respectfully submit that in order to anticipate the pending claimed range, the claimed subject matter "must be disclosed in the reference with sufficient specificity to constitute an anticipation under the statute." MPEP §2131.03 (emphasis added); see also *Atofina v. Great Lakes Chem. Corp.*, 441 F.3d 991 (Fed. Cir. 2006). Earlier this year, in *Atofina*, the Federal Circuit considered whether a patent directed to a method of synthesizing difluoromethane through a gas phase fluorination in the presence of oxygen and a catalyst within a particular temperature range was anticipated by the broad disclosure of a Japanese reference. *Atofina*, 441 F.3d at 998-999. The Court stated that "[i]t is well established that the disclosure of a genus in the prior art is not necessarily a disclosure of every species that is a member of the genus." *Id.* at 999. The Court ultimately held that a disclosure of a temperature range of 100 to 500 °C did not anticipate a claim limitation of a temperature range of 330 to 450 °C, even though the disclosure "is broader than and fully encompasses the specific temperature range claim" of the claimed invention. *Id.* at 999. The Court also held that the disclosure of a 0.001 to 1.0 percent molar ratio range in the prior art did not anticipate the claimed range of 0.1 to 5.0 percent molar ratio since "no reasonable fact finder could determine that this overlap describes the entire claimed range with sufficient specificity to anticipate this limitation of the claim." *Id.* at 1000.

In this case, like *Atofina*, the cited reference does not disclose the claimed subject matter, let alone the claimed subject matter with sufficient specificity to constitute anticipation. Applicants respectfully submit that, although the total amounts of rice flour to dextrin in the '143 reference may overlap the total amounts of rice component to dextrin component in the pending claims, the '143 reference does not indicate with sufficient specificity the critical ratio

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of rice component to dextrin component that is claimed in the pending application. In fact, the only disclosure relating to a ratio of dextrin to any other component is the ratio of dextrin to total starch of the composition. Additionally and significantly, Baur's disclosure is extraordinarily broad concerning flour. In fact, the disclosure by Baur states in Table I that it could be rice flour or corn flour. Similarly, Table I states that the composition may contain modified corn and/or potato starch. Any of the extraordinary number of combinations of corn starch alone or corn and potato starch within this range are outside of the presently claimed invention as the claims state that the composition is free of a corn starch component. In view of the fact that the '143 reference discloses such enormously broad ranges and alternative ingredients, it does not disclose or recognize the criticality of the ratio of rice component to dextrin component, and the surprising and unexpected results which result therefrom. Accordingly, the '143 reference does not anticipate the pending claims.

The Examiner has also rejected claims 52, 58-60, 64-77, 80, 86-87, 95-100, and 104-110 under 35 U.S.C. §103(a) as obvious over the '143 reference. Under MPEP §2144.05, Applicants can overcome an obviousness rejection based on the overlapping ranges by showing the criticality of the claimed range. Applicants have submitted with this Response a Declaration from John Stevens, which demonstrates the surprising and unexpected results of the presently claimed compositions and also demonstrates the criticality of the rice/dextrin ratio. (Decl. of John Stevens ¶7-16).

John Stevens conducted and supervised testing of coating compositions on a french fry and their evaluation. (Decl. of John Stevens ¶8-9). Samples were prepared in the following manner as dry mixes. One hundred count potatoes (substrate) were peeled to remove the skin,

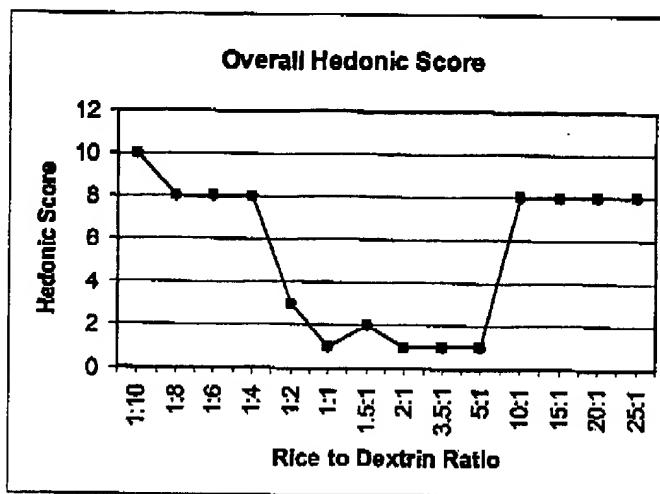
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then cut using a 0.300" cross-sectional raw cut blade set giving a Long Fancy length grade (2-inch to 4-inch lengths). The substrate was blanched at about 180-185°F for about seven minutes until just slightly crisp. The substrate was dipped in 0.5% SAPP/1.0 % salt/water solution at 140°F for 40 seconds. The substrate was dried in a forced-air convection oven on "high" fan speed at 160°F for 14 minutes to get about 10-11% moisture loss, turning the substrate once half way through. The wet batter slurries were next prepared at 40% WBS (wet batter solids). In a five quart Kitchen-Aid, dry batter was wire whipped with the water and mixed for one minute on stir speed. Next, the edges were scraped and mixed for five more minutes on speed level 2. Fifty-five grams of the raw substrate was next coated with batter having one of the rice to dextrin ratios tested, and then blown off lightly with an air knife, giving the Control a pick-up of 18-20%. The substrate was then par-fried for approximately 50 seconds at 365°F in a deep fryer. The substrate was frozen for at least 24 hours and then reconstituted at the following specifications: 1.5 pounds at 350°F for 2.5 minutes. The substrate is then placed under a heat lamp, lightly salted, and evaluated over ten minutes. (Decl. of John Stevens, ¶10).

The Overall Hedonic Score of each sample is displayed in the graph below. The Overall Hedonic Score refers to a comparative score of products against a control product after reviewing all of the individual sensory parameter scores for each product, namely, crispness, toughness, tooth compaction and Munsell color results of the food coating composition as applied to a french fried substrate. A hedonic score of "1" ranks as the best possible product and a score of "10" ranks as the worst possible product. As you can see from the graph

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below, the samples which displayed the best Overall Hedonic Score were those samples comprising a ratio of rice component to dextrin component of from about 1:2 to about 5:1.



(Decl. of John Stevens, ¶ 11).

Specifically, Applicants results show that that the ratio of rice component to dextrin component of the claim invention produces unexpected and surprising results with regard to the crispness, toughness, tooth compaction and Munsell color of the substrates produced in accordance with this invention. (*Id.*). Applicants respectfully submit that these results demonstrate the surprising and unexpected results which are found by using the food coating composition claimed in the present invention comprising a ratio of rice component to dextrin component of from about 1:2 to about 5:1 and the criticality of this ratio. (*See also* Decl. of John Stevens, ¶16). In view of the fact that the '143 reference does not disclose the critical range of rice component to dextrin component and the surprising and unexpected results demonstrated above and in the accompanying Declaration, Applicants respectfully submit that the pending claims are in condition for allowance.

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Finally, the Examiner provisionally rejected various claims on the grounds of non-statutory obviousness-type double-patenting. Under MPEP §804, Applicants respectfully traverse these rejections and will address them in a later response, since this rejection may be later withdrawn if this application is allowed before the cited applications.

Applicants made an effort to place the present application in condition for allowance, and a notice to this effect is earnestly solicited. In the event that there is any remaining formalities or other issues needing Applicants' assistance, Applicants' request the Examiner to call the undersigned attorney.

Respectfully submitted,

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By: Price, Heneveld, Cooper,  
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